

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GEORGE E. JACOBS, IV,

Plaintiff,

v.

CDCR, *et al.*,

Defendants.

Case No. 1:20-cv-00547-ADA-BAM (PC)

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION, WITH PREJUDICE, FOR
FAILURE TO STATE A CLAIM, FAILURE
TO OBEY COURT ORDER, AND FAILURE
TO PROSECUTE

(ECF No. 42)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff George E. Jacobs, IV ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 22, 2022, the Court screened the first amended complaint and granted Plaintiff leave to file a second amended complaint or a notice of voluntary dismissal within thirty (30) days. (ECF No. 42.) The Court expressly warned Plaintiff that the failure to comply with the Court's order would result in a recommendation for dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (*Id.* at 19.) Following four extensions of time, Plaintiff's second amended complaint or notice of voluntary dismissal were due on or before September 28, 2022. (ECF Nos. 44, 46, 48, 51.) Plaintiff was warned in the

1 Court's August 11, 2022 order granting Plaintiff's fourth motion for extension of time that, given
2 the amount of time that had elapsed since the Court's screening order, Plaintiff's pattern of
3 requesting multiple extensions of time in response to the Court's orders,¹ and the length of the
4 extension requested, that order would be the final extension of time granted for this deadline.
5 (ECF No. 51, p. 3.)

6 Nevertheless, on September 16, 2022, Plaintiff filed a motion for a fifth extension of time
7 to file his amended complaint. (ECF No. 54.) Based on the extensive discussion provided in the
8 August 11, 2022 order, as well as inconsistencies in the factual allegations presented in Plaintiff's
9 motion, the Court found no basis for reconsidering the prior order and denied the request for a
10 fifth extension of time. (ECF No. 55.)

11 The September 28, 2022 deadline has expired, and Plaintiff has failed to file a second
12 amended complaint or otherwise communicate with the Court.

13 **II. Failure to State a Claim**

14 **A. Screening Requirement**

15 The Court is required to screen complaints brought by prisoners seeking relief against a
16 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
17 § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous
18 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
19 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

20 A complaint must contain "a short and plain statement of the claim showing that the
21 pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not

22 ¹ In particular, the Court noted the following procedural history:

23 [T]he Court screened Plaintiff's initial complaint on August 14, 2020. (ECF No. 11.) Thereafter,
24 the Court granted Plaintiff five extensions of time to file a first amended complaint before
25 recommending, seven months later, that this action be dismissed due to Plaintiff's failure to
26 prosecute. (ECF No. 23.) Plaintiff was then granted three extensions of time to file his objections
27 to those findings and recommendations, finally filing his objections after two months. (ECF No.
28 30.) The case was later closed and then re-opened in response to Plaintiff's motion for
reconsideration, and Plaintiff was permitted to file a first amended complaint. (ECF No. 41.) The
first amended complaint was screened nearly six months ago, and Plaintiff is now requesting a
fourth extension of the deadline to file a second amended complaint.

(ECF No. 51, pp. 2–3.)

1 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
 2 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
 3 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
 4 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
 5 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

6 To survive screening, Plaintiff’s claims must be facially plausible, which requires
 7 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
 8 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
 9 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
 10 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
 11 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

12 **B. Plaintiff’s Allegations**

13 Plaintiff is currently housed at Centinela State Prison in Imperial, California. The events
 14 in the first amended complaint are alleged to have occurred at the California Substance Abuse
 15 Treatment Facility (“CSATF”) in Corcoran, California. Plaintiff names the following defendants
 16 in both their individual and official capacities: (1) CDCR; (2) CSATF-Corcoran; (3) P.
 17 Brightwell, CSATF Reasonable Accommodation (“RAP”) staff member; (4) J. Zamora, CSATF
 18 RAP staff member; (5) A. Enemoh, CSATF RAP staff member; (6) T. Ordonez, CSATF RAP
 19 staff member; (7) V. Hernandez, CSATF RAP staff member; and (8) S. Whiting, CSATF RAP
 20 staff member. Plaintiff alleges as follows:

21 On October 1, 2016, on C-yard at CSATF, CSATF staff forced Plaintiff into a cell (C1-
 22 113 upper) with a cellmate who was confined to a wheelchair and assigned to the lower bunk. As
 23 a result of CDCR and CSATF personnel’s failure to properly classify Plaintiff’s medical
 24 condition/disability (upper body extremity disability), Plaintiff was housed with a paralyzed right
 25 arm and wrists on the top bunk.

26 At the time of his housing on the top/upper bunk, Plaintiff had documentation stating that
 27 he could not be housed on the upper bunk, due to his upper extremity disability.

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1 Plaintiff could not refuse the housing assignment due to CDCR's and CSATF's policy
2 enforced to punish prisoners who refuse housing assignments. As a result of being forced to
3 accept their housing assignment via "CDCR" Policy, Plaintiff went to sleep on the top bunk in
4 C1-113 upper and fell off the bunk trying to climb down out of the bunk in the dark to use the
5 restroom.

6 Plaintiff was seriously injured, his left hand and wrist was seriously damaged, Plaintiff
7 was sent to the hospital for emergent care/treatment. As a result of the fall, Plaintiff was disabled
8 in both his arms and hands, rendering Plaintiff incapable of participating in daily life activities.

9 CDCR and CSATF rehoused Plaintiff back on the GP mainline and in a cell with another
10 prisoner, instead of rehousing him in the medical ward for disabled prisoners, where he could
11 have sought adequate medical care and protection from predators.

12 On October 18, 2016, an American Disability Act ("ADA") reasonable accommodations
13 request was filed with CDCR and CSATF on Plaintiff's behalf, based on his upper body
14 extremities disability and the non-use of both his left hand and wrist, and right arm, hand, and
15 wrist. At this time he was disabled in both wrists and hands.

16 CDCR and CSATF's healthcare services denied Plaintiff's "ADA" request. However, in
17 their denial response they acknowledged Plaintiff had been improperly housed in C1-113 upper,
18 due to his medical classification. But also stated, "it was beyond the medical information
19 provided."

20 Again on January 31, 2019 CDCR and CSATF failed to properly house Plaintiff, as a
21 result he was again seriously injured. On this day, Plaintiff slipped and fell inside his cell C6-
22 101, in a puddle of polluted rainwater that flooded the cell during the night while he was sleeping.
23 As a result of his fall, he injured his left rib cage, suffered an open gash on his left back, and
24 suffered continuous back pain and rib pain that affected his breathing.

25 CCDCR and CSATF were placed on numerous notices that the cell (C6-101) flooded with
26 polluted rainwater seeping from the floor and cracks in the corner of the cell's walls. Defendants
27 refused to acknowledge the deteriorating conditions of CSATF cells. Plaintiff addressed this
28 issue in his "ADA" request for reasonable accommodations, which were denied. CDCR and

1 CSATF were well aware of the conditions of leaking contaminated water flooding their cells.

2 The pre-existing conditions of cell C6-101 prior to Plaintiff falling in the puddle of
3 contaminated water had already caused him injuries. Plaintiff suffered sores inside of his nose,
4 blisters, rashes, and scabs on his body and skin. Medical treatment was needed for his ailments.
5 Ailments created by decades of water contamination, mold inside the walls, on the bunks, and
6 inside the air ducts. Combined with decades of mixed cross contaminants; bat droppings, rat
7 droppings, and bird fecal inside the air ducts ventilation system and cracks in the cell walls. The
8 rainwater which floods the cell also comes through the roof's air ventilation system and runs
9 down through the air vents directly into the prison cells and dayroom area, visiting room area, and
10 facility kitchens. Yet CDCR and CSATF officials still housed Plaintiff and other prisoners
11 knowingly in harmful, dangerous and deplorable prison cell conditions, as well as subjecting his
12 family and children to these same conditions during visiting hours.

13 On September 15, 2019, Plaintiff filed another "ADA" request based on his disability,
14 further injury to his person and the prison conditions he was housed to live in. CDCR CSATF
15 RAP board members – P. Brightwell, J. Zamora, A. Enemoh, T. Ordonez, V. Hernandez, and S.
16 Whiting – denied Plaintiff his right to reasonable accommodations for his personal safety.

17 CDCR and CSATF healthcare provided Plaintiff with no reasonable accommodations. To
18 this day, Plaintiff is still fighting for ADA shower access, writing assistant, and single cell
19 accommodations. Plaintiff has had to defend for himself all these years by paying other prisoners
20 commissary to help him write letters and fill out forms. At times, Plaintiff has to struggle to write
21 for himself with his untrained left hand. Plaintiff also has to pay for his physical protection from
22 "predators," because he can no longer defend himself from physical harm/attacks. Violence on a
23 maximum security facility is a daily occurrence. CDCR-CSATF has refused to acknowledge
24 Plaintiff's disability and has left him to program in a maximum security (180 design) facility,
25 subjecting him to daily violence and harm.

26 Policies set in place by CDCR and CSATF allowed Plaintiff to be denied ADA reasonable
27 accommodations in an unconstitutional manner.

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1 During all times relevant herein, Plaintiff was an active participant in the CCCMS mental
2 health level of care, receiving medical treatment for mental conditions caused by conditions
3 Plaintiff was exposed to at the hand and control of CDCR and CSATF.

4 Plaintiff purports to bring the following causes of action:

5 Count One

6 Deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth
7 Amendments. Defendants created a policy which denied Plaintiff's medical needs to be housed
8 on a lower bunk. Defendants' policy set in motion the events which led to Plaintiff's serious
9 medical needs after he fell from the top bunk bed and seriously injured his one good arm (left
10 arm) due to his fall and Defendants' failure to honor his lower bunk medical chrono. Defendants
11 willfully and knowingly housed Plaintiff in a harmful and dangerous living condition by forcing
12 him to accept an upper bunk assignment, which was dangerous and harmful to his pre-existing
13 serious medical condition – "Radial Nerve Palsy – Neuropathy," due to a crushed Humerous
14 Bone Fracture. Plaintiff alleges that the living conditions Defendants' subjected him to seriously
15 injured his left wrist and fingers, requiring emergency treatment resulting in additional wrist
16 brace and pain medication.

17 Count Two

18 Deliberate indifference to serious medical needs in violation of the Eighth and Fourteenth
19 Amendments. Defendants refused to provide Plaintiff with emergency medical care to treat a
20 gash on his lower back rib section which was actively bleeding, after falling in the cell in
21 contaminated rain leakage water. Defendants assigned Plaintiff to live in a cell that was
22 hazardous to human life, contained accumulated mildew, mold, asbestos, rat and bat feces inside
23 the walls, cracks, ventilation system and running rainwater causing the cell to pool water on the
24 cell floor, under bunks, running out of the air vents, and corner cell walls. These conditions
25 caused Plaintiff aggravating respiratory problems, nose sores and blisters, aggravated sinus
26 problems, skin rashes, sores, back problems, and bruised ribs.

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1 Count Three

2 Deliberate indifference to serious medical needs in violation of the ADA Act Title II and
3 III, and the Eighth and Fourteenth Amendments. Defendants denied and continuously refused
4 Plaintiff ADA status and reasonable accommodations for his upper extremity disability.
5 Defendants' common practice and policy of denying Plaintiff's 1824 reasonable accommodations
6 request created a harmful and unreasonable risk to Plaintiff's health and safety, causing Plaintiff
7 to suffer physical harm and mental pain. Defendants denied Plaintiff ADA status and reasonable
8 accommodations, excluding him from participation in and/or denied him the benefits of
9 programs, services, and activities of CDCR, subjecting Plaintiff to discrimination because of his
10 disability. Defendants denied and refused Plaintiff equal access to housing and programs in a
11 manner that is safe and appropriate for his disability and consistent with the "mission" of CDCR
12 Departmental Policy. The denial and refusal of ADA status and reasonable accommodations
13 subjected Plaintiff to undue hardships, serious injuries, discrimination, and denial of medical
14 treatment. It further subjected Plaintiff to harassment, embarrassment and retaliation, unsanitary
15 living conditions, unsafe and dangerous housing assignments due to his vulnerability, and
16 inability to protect himself from harm, such as physical assaults or falling off a bunk bed with no
17 steps or ladders.

18 Count Four

19 Defendants violated Plaintiff's rights under the First, Eighth, and Fourteenth Amendments
20 by falsifying Plaintiff's medical status, resulting in denial of high risk medical care, safe housing,
21 and subjection to cruel and unusual unsanitary conditions. Defendants conspired among each
22 other to falsify Plaintiff's medical high risk status in order to prevent him from being housed in a
23 high risk medical facility, where he would have received high risk medical treatment and housing.
24 Defendants conspired to prevent Plaintiff from receiving the benefits of high risk medical
25 treatment and housing to teach him a lesson for filing ADA medical complaints and maintaining
26 his lawsuits against CDCR prison employees. Plaintiff alleges that each defendant harbored
27 animus towards him for exposing their misconduct against him to high ranking government
28 officials.

1 Count Five

2 Intentional negligent infliction of emotional distress. Plaintiff alleges that due to the acts
3 or omissions set forth in the complaint, he has suffered and continues to suffer severe mental and
4 emotional pain, sustained numerous physical and emotional injuries, including but not limited to:
5 severe back pain, arm, wrist, and fingers nerve damage pain, humiliation, dizziness, rashes,
6 blisters, open sores and indignities. Plaintiff did and will in the future continue to incur doctor,
7 medical, pharmaceutical, and incident expenses.

8 Count Six

9 Plaintiff alleges that he is entitled to attorney fees and costs of suit.

10 Relief

11 Plaintiff demands the following relief: (a) declaring Plaintiff's right to be free from
12 intimidating and unlawful activities designed to coerce Plaintiff into refraining from pursuing his
13 lawsuits and complaints against CDCR prison officials; (b) permanently enjoining defendants
14 from intimidating and unlawful activities designed to coerce Plaintiff in refraining from pursuing
15 his lawsuits and "staff misconduct complaints" against CDCR prison officials; (c) order
16 defendants to provide Plaintiff with adequate medical care, including meaningful ADA
17 reasonable accommodations and restoring his "High Risk Medical" status; (d) enjoining any and
18 all retaliation against Plaintiff for filing and maintaining lawsuits and 602 complaints; (e) order
19 defendants to medically release Plaintiff from CDCR custody due to Plaintiff's medical disability
20 and defendants' failure and/or inability to provide him with adequate medical care and safe
21 housing; (f) appoint expert(s) to represent Plaintiff, or in the alternative appoint independent
22 medical expert to settle any disputes; (g) injunction for adequate meaningful medical care
23 surrounding Plaintiff's disability and injuries; (h) compensatory damages in the sum of \$300,000;
24 (i) punitive damages in the sum of \$600,000; (j) special damages in the sum of \$150,000;
25 (k) Plaintiff's cost of suit; (l) demand for jury trial on all issues herein; and (m) any additional
26 relief the Court deems just and equitable.

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1 **C. Discussion**

2 Plaintiff’s complaint fails to comply with Federal Rules of Civil Procedure 8, 18, and 20,
3 and fails to state a cognizable claim upon which relief may be granted.

4 **1. Federal Rule of Civil Procedure 8**

5 Pursuant to Rule 8, a complaint must contain “a short and plain statement of the claim
6 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed factual allegations
7 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation omitted). Plaintiff must
9 set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
10 its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
11 are accepted as true, legal conclusions are not. *Id.*; *see also Twombly*, 550 U.S. at 556–57; *Moss*,
12 572 F.3d at 969.

13 Here, Plaintiff’s complaint is neither short nor plain. Many of Plaintiff’s allegations are
14 conclusory and simply recite the elements of the various causes of action without supporting
15 factual allegations. General assertions regarding the failure of unspecified Defendants to provide
16 Plaintiff with proper medical care, or to provide him with a certain medical or disability
17 classification, are not sufficient.

18 **2. Federal Rules of Civil Procedure 18 and 20**

19 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed.
20 R. Civ. P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*,
21 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so
22 long as (1) the claim arises out of the same transaction or occurrence, or series of transactions and
23 occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2);
24 *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997). The “same transaction” requirement
25 refers to similarity in the factual background of a claim. *Id.* at 1349. Only if the defendants are
26 properly joined under Rule 20(a) will the Court review the other claims to determine if they may
27 be joined under Rule 18(a), which permits the joinder of multiple claims against the same party.

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1 Plaintiff may not raise separate, unrelated events in a single action, even if they occurred
 2 at the same institution. For instance, Plaintiff may not, in a single case, assert a claim related to
 3 an improper upper bunk assignment leading to his left arm injury while simultaneously asserting
 4 a conditions of confinement claim regarding pooling water on the floor of his cell. Unrelated
 5 claims involving multiple defendants belong in different suits.

6 3. Eleventh Amendment Immunity

7 Plaintiff is attempting to sue defendants for monetary damages in their official and
 8 individual capacities. “Suits against state officials in their official capacity . . . should be treated
 9 as suits against the State.” *Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Holley v. Cal. Dep’t of Corr.*,
 10 599 F.3d 1108, 1111 (9th Cir. 2010) (treating prisoner’s suit against state officials in their official
 11 capacities as a suit against the state of California). An official capacity suit “represent[s] only
 12 another way of pleading an action against an entity of which an officer is an agent.” *Kentucky v.*
 13 *Graham*, 473 U.S. 159, 165 (1985) (citation omitted). Such a suit “is not a suit against the
 14 official personally, for the real party in interest is the entity.” *Id.* at 166 (emphasis in original).

15 “The Eleventh Amendment bars suits for money damages in federal court against a state,
 16 its agencies, and state officials acting in their official capacities.” *Aholelei v. Dep’t of Public*
 17 *Safety*, 488 F.3d 1144, 1147 (9th Cir. 2007). Indeed, the Eleventh Amendment prohibits federal
 18 courts from hearing a Section 1983 lawsuit in which damages or injunctive relief is sought against
 19 a state, its agencies (such as CDCR) or individual prisons, absent “a waiver by the state or a valid
 20 congressional override. . . .” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). “The
 21 Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, ‘an
 22 arm of the state,’ its instrumentalities, or its agencies.” *See Fireman's Fund Ins. Co. v. City of*
 23 *Lodi, Cal.*, 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations omitted), cert.
 24 denied, 538 U.S. 961 (2003). “The State of California has not waived its Eleventh Amendment
 25 immunity with respect to claims brought under § 1983 in federal court. . . .” *Dittman*, 191 F.3d at
 26 1025–26 (citing *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)); *see also Brown v.*
 27 *Cal. Dep’t. of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (finding California Department of
 28 Corrections and California Board of Prison Terms entitled to Eleventh Amendment immunity).

Therefore, Plaintiff cannot pursue claims for damages or injunctive relief against the State, CDCR, or CSATF in this action. Plaintiff's claim for monetary damages against the named defendants in their official capacities also are barred by the Eleventh Amendment.

4. Linkage Requirement

The Civil Rights Act under which this action was filed provides:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.’” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

Here, Plaintiff’s complaint improperly lumps together nearly all defendants in his claims. Nearly all of his factual allegations are against Defendants CDCR and CSATF, who are immune from damages and injunctive relief, or against “Defendants” generally. The only factual allegations in the complaint against the other named defendants CSATF RAP members Brightwell, Zamora, Enemoh, Ordonez, Hernandez, and Whiting, state only that they denied Plaintiff his right to reasonable accommodations for his personal safety.

5. ADA

The Americans with Disabilities Act provides, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. The ADA defines “qualified individual with a disability” as “an individual with a disability who, with or without reasonable modifications to rules, policies, or

practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” *Id.* § 12131(2). The Supreme Court has held that “public entity” includes state prisons. *United States v. Georgia*, 546 U.S. 151, 154 (2006) (citation omitted).

Plaintiff does not state a viable claim under the ADA. He alleges that defendants CDCR and CSATF denied him adequate accommodations, but he does not allege facts that show he was excluded from participation in, or denied the benefits of, any service or programs offered by the prison because of his disability, or that he was subjected to any type of discrimination by reason of his disability. Further, plaintiff’s allegations of inadequate medical care do not state a claim under the ADA. *Bryant v. Madigan*, 84 F.3d 246, 249 (7th Cir. 1996) (“The ADA does not create a remedy for medical malpractice.”); *see also Simmons*, 609 F.3d at 1022 (Inadequate or negligent medical treatment alone does not constitute an unlawful failure to accommodate under the ADA or the Rehabilitation Act.).

Additionally, to the extent Plaintiff sues the defendants in their individual capacities, he may not “bring an action under 42 U.S.C. § 1983 against a State official in her individual capacity to vindicate rights created by Title II of the ADA.” *Vinson v. Thomas*, 288 F.3d 1145, 1156 (9th Cir. 2002).

6. First Amendment – Retaliation

Allegations of retaliation against a prisoner’s First Amendment rights to speech or to petition the government may support a section 1983 claim. *Silva v. Di Vittorio*, 658 F.3d 1090, 1104 (9th Cir. 2011); *Rizzo v. Dawson*, 778 F.2d 527, 532 (9th Cir. 1985); *see also Valandingham v. Bojorquez*, 866 F. 2d 1135 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995). “Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005); *accord Watison v.*

1 *Carter*, 668 F.3d 1108, 1114-15 (9th Cir. 2012); *Silva*, 658 at 1104; *Brodheim v. Cry*, 584 F.3d
2 1262, 1269 (9th Cir. 2009).

3 Plaintiff fails to state a claim regarding retaliation. Although Plaintiff alleges that
4 Defendants conspired to prevent Plaintiff from receiving the benefits of high risk medical
5 treatment and housing “to teach him a lesson for filing ADA medical complaints and maintaining
6 lawsuits against CDCR prison employees,” these allegations fail to link any specific Defendant to
7 these claims. Critically, Plaintiff’s allegations do not demonstrate that actions taken by any
8 defendants in any way chilled the exercise of his First Amendment rights.

9 **7. Eighth Amendment – Medical Care**

10 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual
11 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of
12 “deliberate indifference to serious medical needs.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir.
13 2006) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). The two-part test for deliberate
14 indifference requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure
15 to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and
16 wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately
17 indifferent.” *Jett*, 439 F.3d at 1096.

18 A defendant does not act in a deliberately indifferent manner unless the defendant “knows
19 of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825,
20 837 (1994). “Deliberate indifference is a high legal standard,” *Simmons v. Navajo Cty. Ariz.*, 609
21 F.3d 1011, 1019 (9th Cir. 2010); *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004), and is
22 shown where there was “a purposeful act or failure to respond to a prisoner’s pain or possible
23 medical need” and the indifference caused harm. *Jett*, 439 F.3d at 1096.

24 In applying this standard, the Ninth Circuit has held that before it can be said that a
25 prisoner’s civil rights have been abridged, “the indifference to his medical needs must be
26 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this
27 cause of action.” *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429
28 U.S. at 105–06). “[A] complaint that a physician has been negligent in diagnosing or treating a

1 medical condition does not state a valid claim of medical mistreatment under the Eighth
 2 Amendment. Medical malpractice does not become a constitutional violation merely because the
 3 victim is a prisoner.” *Estelle*, 429 U.S. at 106; *see also Anderson v. Cty. of Kern*, 45 F.3d 1310,
 4 1316 (9th Cir. 1995). Even gross negligence is insufficient to establish deliberate indifference to
 5 serious medical needs. *See Wood v. Housewright*, 900 F.2d 1332, 1334 (9th Cir. 1990).

6 Further, a “difference of opinion between a physician and the prisoner—or between
 7 medical professionals—concerning what medical care is appropriate does not amount to
 8 deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978, 987 (9th Cir. 2012) (citing *Sanchez v.*
 9 *Vild*, 891 F.2d 240, 242 (9th Cir. 1989)), overruled in part on other grounds, *Peralta v. Dillard*,
 10 744 F.3d 1076, 1082–83 (9th Cir. 2014); *Wilhelm v. Rotman*, 680 F.3d 1113, 1122–23 (9th Cir.
 11 2012) (citing *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff “must
 12 show that the course of treatment the doctors chose was medically unacceptable under the
 13 circumstances and that the defendants chose this course in conscious disregard of an excessive
 14 risk to [his] health.” *Snow*, 681 F.3d at 988 (citing *Jackson*, 90 F.3d at 332) (internal quotation
 15 marks omitted).

16 As pled, Plaintiff’s complaint fails to state a cognizable claim for inadequate medical
 17 treatment. The Court cannot ascertain whether Plaintiff intends to bring claims under the Eighth
 18 Amendment related to his request for accommodations. Plaintiff does allege that CSATF failed to
 19 provide medical treatment after slipping and falling in his cell. However, Plaintiff does not link
 20 any defendant to these allegations. In any amended complaint, Plaintiff must clearly and
 21 succinctly state what happened, when it happened, and who was involved in the alleged denial of
 22 his medical care in violation of the Eighth Amendment. Further, Plaintiff’s allegations should be
 23 limited to properly joined claims.

24 **8. Conditions of Confinement**

25 The Eighth Amendment protects prisoners from inhumane methods of punishment and
 26 from inhumane conditions of confinement. *Farmer*, 511 U.S. 825; *Morgan v. Morgensen*, 465
 27 F.3d 1041, 1045 (9th Cir. 2006). Thus, no matter where they are housed, prison officials have a
 28 duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical

1 care, and personal safety. *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000) (quotation marks
 2 and citations omitted). To establish a violation of the Eighth Amendment, the prisoner must
 3 “show that the officials acted with deliberate indifference . . .” *Labatad v. Corrs. Corp. of Amer.*,
 4 714 F.3d 1155, 1160 (9th Cir. 2013) (citing *Gibson v. Cty. of Washoe*, 290 F.3d 1175, 1187 (9th
 5 Cir. 2002)).

6 The deliberate indifference standard involves both an objective and a subjective prong.
 7 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” *Farmer* at 834.
 8 Second, subjectively, the prison official must “know of and disregard an excessive risk to inmate
 9 health or safety.” *Id.* at 837; *Anderson v. Cty. of Kern*, 45 F.3d 1310, 1313 (9th Cir. 1995).

10 Objectively, extreme deprivations are required to make out a conditions-of-confinement
 11 claim and only those deprivations denying the minimal civilized measure of life’s necessities are
 12 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
 13 503 U.S. 1, 9 (1992). Although the Constitution “ ‘does not mandate comfortable prisons,’ ”
 14 *Wilson v. Seiter*, 501 U.S. 294, 298 (1991), “inmates are entitled to reasonably adequate
 15 sanitation, personal hygiene, and laundry privileges, particularly over a lengthy course of time,”
 16 *Howard v. Adkison*, 887 F.2d 134, 137 (8th Cir. 1989).

17 Bunk Assignment

18 Plaintiff may be able to state a cognizable claim concerning the failure to assign him to a
 19 lower bunk when he had a chrono for a lower bunk due to his upper extremity disability, which
 20 resulted in him falling out of the upper bunk and injuring his left hand and wrist. However, as
 21 currently pled, Plaintiff’s general, conclusory allegations are not sufficient. Plaintiff’s complaint
 22 fails to adequately link any defendant to this claim.

23 Cell Conditions

24 Plaintiff may be able to state a cognizable claim concerning the conditions of his cell
 25 relating to flooding, asbestos, and animal fecal matter. However, as currently pled, Plaintiff’s
 26 general, conclusory allegations are not sufficient. Plaintiff’s complaint fails to adequately link
 27 any defendant to this claim or otherwise demonstrate how long these conditions may or may not
 28 have persisted.

1 Slip and Fall

2 Insofar as Plaintiff is complaining about slipping and falling in a puddle, under the Eighth
 3 Amendment, “slippery prison floors . . . do not state even an arguable claim for cruel and unusual
 4 punishment.” *LeMaire v. Maass*, 12 F.3d 1444, 1457 (9th Cir. 1993) (quotation omitted). Indeed,
 5 federal courts have repeatedly rejected Eighth Amendment slip and fall claims. *See Oubichon v.*
 6 *Carey*, 2017 WL 2162940, at *8 (E.D. Cal. May 17, 2017) (citing *Coleman v. Sweetin*, 745 F.3d
 7 756, 764 & n.7 (5th Cir. 2014) (collecting cases); *see also Collier v. Garcia*, 2018 WL 659014, at
 8 *2 (N.D. Cal. Jan. 31, 2018) (dismissing § 1983 claim alleging prisoner slipped and fell in his cell
 9 in a puddle of water from a leaking chase); *Aaronian v. Fresno Cty. Jail*, 2010 WL 5232969, at
 10 *2–*3 (E.D. Cal. 2010) (dismissing § 1983 claim that plumbing leak caused puddle, resulting in
 11 plaintiff’s slip and fall, as not cognizable); *Gilman v. Woodford*, 2006 WL 1049739 (E.D. Cal.
 12 April 20, 2006) (granting qualified immunity to defendants when prisoner slipped and fell in
 13 puddle of water resulting from leaky roof known to defendants), *aff’d* by 2008 WL 686740 (9th
 14 Cir. March 12, 2008) (unpublished memorandum disposition). Therefore, in order to state a
 15 cognizable claim for relief, there must be a confluence of exacerbating conditions such that the
 16 slippery floor posed a serious, unavoidable threat to plaintiff’s safety. *See Frost v. Agnos*, 152
 17 F.3d 1124, 1129 (9th Cir. 1998) (“[s]lippery floors without protective measures could create a
 18 sufficient danger to warrant relief” when an inmate alleges facts that exacerbate the danger
 19 resulting from such conditions; inmate using crutches had repeatedly fallen and injured himself on
 20 slippery shower floors); *Osolinski v. Kane*, 92 F.3d 934, 938 (9th Cir. 1996) (finding prisoner
 21 failed to plead any exacerbating conditions which rendered him unable to provide for his own
 22 safety).

23 Plaintiff has not pled any conditions that rendered him unable to provide for his own
 24 safety in the sense that they precluded him from avoiding the puddle or rendered him unable to
 25 perceive the slippery conditions. *Osolinski*, 92 F.3d at 938; *Mancinas v. Brown*, 2018 WL
 26 1109673, at *2 (E.D. Cal. Mar. 1, 2018) (dismissing prisoner’s § 1983 claim that known, ongoing
 27 leak caused puddle, resulting in slip and fall). In addition, Plaintiff has failed to link any
 28 defendant to the leaking water in his cell. Thus, Plaintiff fails to state a cognizable Eighth

1 Amendment conditions of confinement claim against any of the defendants arising out of his slip
2 and fall.

3 **9. Eighth Amendment – Failure to Protect**

4 Prison officials have a duty under the Eighth Amendment to protect prisoners from
5 violence at the hands of other prisoners or others because being violently assaulted in prison is
6 simply not part of the penalty that criminal offenders pay for their offenses against society.
7 *Farmer*, 511 U.S. at 833; *Clem v. Lomeli*, 566 F.3d 1177, 1181 (9th Cir.2009); *Hearns v.*
8 *Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005). However, prison officials are liable under the
9 Eighth Amendment only if they demonstrate deliberate indifference to conditions posing a
10 substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference
11 occurs when an official acted or failed to act despite his knowledge of a substantial risk of serious
12 harm. *Farmer*, 511 U.S. at 834, 841; *Clem*, 566 F.3d at 1181; *Hearns*, 413 F.3d at 1040.

13 Plaintiff’s complaint does not state a cognizable claim for failure to protect. Although
14 Plaintiff alleges that his injuries to his hands left him unable to defend himself from attacks by
15 other inmates, and the failure of prison officials to grant him “reasonable accommodations” in a
16 medical facility left him vulnerable to such attacks, Plaintiff does not link these claims to any
17 defendants. Furthermore, there is no indication in the complaint that any defendant was aware
18 that Plaintiff was at risk of serious harm at the hands of any other inmates.

19 **10. Fourteenth Amendment – Classification**

20 Although unclear, it appears that Plaintiff is challenging his medical classification.
21 Prisoners have no federally protected liberty interest in their classification status. *See Hernandez*
22 *v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987). No federal due process right is implicated by a
23 prison’s classification decisions. *See Meachum v. Fano*, 427 U.S. 215, 224–25, (1976).

24 **11. Conspiracy**

25 “Conspiracy is not itself a constitutional tort under § 1983. It does not enlarge the nature
26 of the claims asserted by the plaintiff, as there must always be an underlying constitutional
27 violation. Conspiracy may however, enlarge the pool of responsible defendants by demonstrating
28 their causal connections to the violation; the fact of the conspiracy may make a party liable for the

1 unconstitutional actions of the party with whom he has conspired.” *Lacey v. Maricopa Cty.*, 693
 2 F.3d 896, 935 (9th Cir. 2012) (internal citations omitted).

3 To establish a cognizable claim for conspiracy under 42 U.S.C. § 1983, a plaintiff must
 4 allege (1) the existence of an express or implied agreement among the defendants to deprive the
 5 plaintiff of his constitutional rights, and (2) an actual deprivation of those rights resulting from
 6 that agreement. *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir. 2010). To establish a conspiracy,
 7 Plaintiff allege specific facts showing “an agreement or meeting of the minds to violate
 8 constitutional rights. To be liable, each participant in the conspiracy need not know the exact
 9 details of the plan, but each participant must at least share the common objective of the
 10 conspiracy.” *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) (internal citations and quotation
 11 marks omitted). The mere conclusory statement that defendants “conspired” together is not
 12 sufficient to state a cognizable claim. *Woodrum v. Woodward Cty.*, 866 F.2d 1121, 1126 (9th Cir.
 13 1989).

14 Here, the first amended complaint fails to state a claim for conspiracy. Plaintiff makes
 15 general, omnibus allegations that the Defendants, in doing the myriad of acts alleged, were doing
 16 so in the furtherance of some conspiracy. Plaintiff must plead the basic elements of a civil
 17 conspiracy: an agreement and concerted action amongst the defendants in the furtherance of that
 18 agreement, and that each defendant conspired to violate Plaintiff’s constitutional rights. *See also*
 19 *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1047 (9th Cir. 2008) (noting that a bare allegation of
 20 a conspiracy is almost impossible to defend against where numerous individuals are concerned).

21 **12. State Law Claims**

22 Plaintiff purports to bring a state law claim for negligent and/or intentional infliction of
 23 emotional distress. The Government Claims Act requires exhaustion of Plaintiff’s state law tort
 24 claims with the California Victim Compensation and Government Claims Board, and Plaintiff is
 25 required to specifically allege compliance in his complaint. *Shirk v. Vista Unified Sch. Dist.*, 42
 26 Cal. 4th 201, 208–09 (Cal. 2007); *State v. Super. Ct. of Kings Cty. (Bodde)*, 32 Cal. 4th 1234,
 27 1239 (Cal. 2004); *Mabe v. San Bernardino Cty. Dep’t of Pub. Soc. Servs.*, 237 F.3d 1101, 1111
 28 (9th Cir. 2001); *Mangold v. Cal. Pub. Utils. Comm’n*, 67 F.3d 1470, 1477 (9th Cir. 1995); *Karim–*

1 *Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 627 (9th Cir. 1988). Plaintiff has failed to
 2 allege compliance with the Government Claims Act.

3 **13. Declaratory Relief**

4 To the extent Plaintiff's complaint seeks a declaratory judgment, it is unnecessary. "A
 5 declaratory judgment, like other forms of equitable relief, should be granted only as a matter of
 6 judicial discretion, exercised in the public interest." *Eccles v. Peoples Bank of Lakewood Village*,
 7 333 U.S. 426, 431 (1948). "Declaratory relief should be denied when it will neither serve a useful
 8 purpose in clarifying and settling the legal relations in issue nor terminate the proceedings and
 9 afford relief from the uncertainty and controversy faced by the parties." *United States v.*
 10 *Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985). If this action reaches trial and the jury returns
 11 a verdict in favor of Plaintiff, then that verdict will be a finding that Plaintiff's constitutional
 12 rights were violated. Accordingly, a declaration that any defendant violated Plaintiff's rights is
 13 unnecessary.

14 **III. Failure to Prosecute and Failure to Obey a Court Order**

15 **A. Legal Standard**

16 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with
 17 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
 18 within the inherent power of the Court." District courts have the inherent power to control their
 19 dockets and "[i]n the exercise of that power they may impose sanctions including, where
 20 appropriate, . . . dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
 21 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
 22 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
 23 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
 24 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
 25 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
 26 (dismissal for failure to comply with court order).

27 In determining whether to dismiss an action, the Court must consider several factors:
 28 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
2 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
3 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

4 **B. Discussion**

5 Here, Plaintiff's second amended complaint is overdue, and he has failed to comply with
6 the Court's order. The Court cannot effectively manage its docket if Plaintiff ceases litigating his
7 case. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

8 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
9 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
10 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
11 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d
12 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose
13 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
14 progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Products*
15 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

16 Finally, the Court's warning to a party that failure to obey the court's order will result in
17 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
18 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's February 22, 2022 screening
19 order expressly warned Plaintiff that his failure to file an amended complaint would result in a
20 recommendation of dismissal of this action, with prejudice, for failure to obey a court order and
21 for failure to state a claim. (ECF No. 42, p. 10.) In addition, Plaintiff was provided the same
22 warning with each extension of the deadline to file a second amended complaint or notice of
23 voluntary dismissal, (ECF Nos. 44, p. 3; 46, p. 3; 48, p. 3; 51, p. 4), and the Court's denial of
24 Plaintiff's request for a fifth extension of time, (ECF No. 55, p. 3). Thus, Plaintiff had adequate
25 warning that dismissal could result from his noncompliance.

26 Finally, the Court notes that this case was originally filed on April 16, 2020, more than
27 two and a half years ago, and has yet to progress beyond the screening of Plaintiff's first amended
28 complaint. This action was already dismissed once due to Plaintiff's delay in filing a first

1 amended complaint, and despite being provided a further opportunity to litigate his claims,
2 Plaintiff continued to request multiple lengthy extensions of time in response to any deadline set
3 by the Court, unnecessarily delaying the resolution of this case.

4 At this stage in the proceedings, there is little available to the Court that would constitute a
5 satisfactory lesser sanction while protecting the Court from further unnecessary expenditure of its
6 scarce resources. Plaintiff is proceeding *in forma pauperis* in this action, making monetary
7 sanctions of little use, and the preclusion of evidence or witnesses is likely to have no effect given
8 that Plaintiff has refused to take any action to continue litigating this case.

9 **IV. Conclusion and Recommendation**

10 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
11 RECOMMENDS that this action be dismissed, with prejudice, for failure to state a claim
12 pursuant to 28 U.S.C. § 1915A, for failure to obey a Court order, and for Plaintiff's failure to
13 prosecute this action.

14 These Findings and Recommendation will be submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
16 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
17 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
18 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
19 specified time may result in the waiver of the "right to challenge the magistrate's factual
20 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
21 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: October 12, 2022

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
27
28